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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,403	08/05/2003	Albin Lloyd Kasper	KASPER 1-17-26	7015
47394	7590	10/20/2005	EXAMINER	
HITT GAINES, PC LUCENT TECHNOLOGIES INC. PO BOX 832570 RICHARDSON, TX 75083			KANG, JULIANA K	
			ART UNIT	PAPER NUMBER
			2874	

DATE MAILED: 10/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/634,403	<b>Applicant(s)</b> KASPER ET AL.	
	<b>Examiner</b> Juliana K. Kang	<b>Art Unit</b> 2874	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on August 10, 2005 (RCE).
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

1. The request filed on August 10, 2005 for a Request for Continued Examination (RCE) under 37 CFR 1.114 is acceptable and a RCE has been established. An action on the RCE follows.

***Specification***

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Newly added term "a continuum of delay lengths" is not disclosed in the specification.

***Claim Objections***

3. Claim 1 recite the new limitation, a continuum of delay lengths, in line 10. It is a new term and it is not clear to the Examiner what exactly it is referring. Is it referring to the combined delay created by both the incrementally variable optical delay line and the continuously variable optical delay line is physically? Claim 1 also recites the limitation, said received optical signal by a continuous delay length, in line 9. This limitation is vague to the Examiner because in lines 3-4, it is recited that an incrementally variable optical delay line is configured to delay a received optical signal by an incremental delay length. Thus it is not clear to the Examiner whether the received optical signal is delayed by the incrementally variable optical delay line or the continuously variable optical delay line.

### ***Double Patenting***

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 2, 4 and 7 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No.

6,934,431 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-8 of the patent recite all of the structure recited in claims 1-3 of the present application plus additional structure.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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6. Claims 1-3 and 10 are rejected under 35 U.S.C. 102(e) as being anticipated by Biyikli (U.S. Patent 6,784,416 B2).

Biyikli discloses a variable optical delay system comprising a series of optical switches connected in states by different incremental lengths of optical fiber (an incrementally variable optical delay line) and tunable fiber delay lines (a continuously variable optical delay line). Since Biyikli discloses that the incrementally variable optical delay line and the continuously variable optical delay line that are serially connected (see Fig. 1), it inherently teaches the claimed limitation of delay having a range encompassing the delay increment.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 4-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Biyikli and Kazarinov et al (U.S. Patent 6,289,151 B1).

As describe above Biyikli discloses the claimed invention except the types of continuously variable optical delay line. Kazarinov et al teaches different types of continuously variable optical delay line including, all-pass optical fiber, ring resonators, chirped Bragg gratings. Since Biyikli teaches using "other tunable fiber delay lines" (see column 7 line 63) and applicant also does not provide the criticality of having such delay

lines, it would have been obvious to one having ordinary skill in the art to apply other types of delay lines in Biyikli such as all-pass optical fiber, ring resonators and chirped Bragg gratings as taught by Kazarinov et al.

***Response to Arguments***

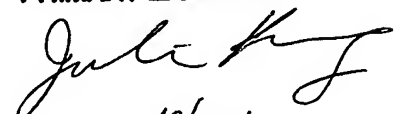
9. Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new ground(s) of rejection.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Juliana K. Kang whose telephone number is (571) 272-2348. The examiner can normally be reached on Mon. & Thur. 7:00-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rod Bovernick can be reached on (571) 272-2344. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**JULIANA KANG  
PRIMARY EXAMINER**

  
10/19/04